

(Reiger, col. 3, line 54) and that the bag is “formed of a porous, needle punched fabric of fibers which are tangled and knotted...” (Reiger, col. 4, lines 15-16.) The bag may be “placed in or over the prior art wire basket” (Reiger, col. 4, lines 9-10.) Finally, Reiger discloses:

Also, if needed to provide stability to the plants, the bag containing the root and soil masses with or without wire baskets, can be *placed* in above-ground or in-ground pots like the pot 24 shown in FIG. 6.

(Reiger, col. 6, lines 8-11, emphasis added.)

Of the claims in this section that have been rejected by the Examiner, claims 1, 29, 46 and 48 are independent claims. All other listed claims are dependent from these four independent claims. Each of claims 1, 29, 46 and 48 claim, *inter alia*, “root-tip-trapping material *bonded* to...” (Claims 1, 29, 46 and 48, emphasis added.)

The Merriam-Webster dictionary defines bond as, *inter alia*, “to cause to adhere firmly”.

Applicant clearly claims that the root-tip-trapping material is bonded to something else, meaning that the root-tip-trapping material adheres firmly to something else.

To reject a claim as being anticipated, the Examiner has the burden of providing a *prima facie* case of anticipation by citing a reference that discloses each and every claimed limitation of Applicant’s claimed invention. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Applicant asserts that the Examiner has failed to meet the burden of presenting a *prima facie* case of anticipation by ignoring the clear meaning of the word “bonded” as used in Applicant’s claims. Applicant used the word “bonded” in the claims under examination knowing the clear and common meaning of the word. Applicant claims that the root-tip-trapping material is *bonded* to something else, such as a second layer that is characterized as being root impenetrable.

The Examiner cites FIG. 6 of Reiger as showing that Reiger discloses that the bag made of

fabric is bonded to a pot. (Office Action, page 2, last paragraph.) A brief examination of FIG. 6 shows this is not the case. FIG. 6 clearly shows that there is a wide annular space between the bag 10 and the pot 24. Clearly, not only is the bag 10 not bonded to the pot 24, but the bag is not even touching the pot. Furthermore, Reiger describes FIG. 6 as showing only that the bag can be placed in the pot 24 that is shown in FIG. 6. (Reiger, *supra*.) Reiger does not show or describe that the bag is bonded to the pot.

Because Reiger does not disclose that any material is bonded to any other material, Reiger clearly does not disclose that a root-tip-trapping material is bonded to something else, such as claimed by Applicant. Therefore, the Examiner has failed to present a *prima facie* case of anticipation by failing to present a reference that discloses each and every one of Applicant's claim limitations. Reconsideration and withdrawal of the rejection is therefore requested.

Claims 49 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Berlit et al. (GB 2,073,567 A). Claim 49 is an independent claim. The Examiner asserts, "Reiger discloses a root growth barrier comprising a plastic sheet 24 having a surface bonded to a porous fabric". (Office Action, page 10, second paragraph.) For the reasons presented above, Applicant again asserts that Reiger does not disclose bonding a root growth barrier to a porous fiber or to anything else.

To establish *prima facie* obviousness, the Examiner must cite prior art references that together teach or suggest all of the claim limitations presented by Applicant. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

Looking again at FIG. 6 of Reiger, there is an annular space between the bag 10 and the pot 24. Reiger describes FIG. 6 as an example of how the bag 10 may be *placed* in a pot 24. (Reiger, *supra*) Reiger further discloses, "Any root tips which do penetrate the bags are air pruned when the bag is above ground or choked off when the bag is below ground..." (Reiger, col. 6, lines 5-8.) Reiger does not teach or suggest that the root tips that do penetrate the bag

contact anything other than air or ground. Reiger does not teach or suggest that these root tips touch the pot shown in FIG. 6. Reiger does not teach or suggest that the root tips penetrating the bag touch anything because there is nothing touching the bag, much less bonded to the bag. There is no suggestion or teaching by Reiger that the bag should be, could be, or is touching or bonded to the pot shown in FIG. 6

Clearly by rejecting this claim the Examiner has not considered all the words in the claims under examination as required by the courts. Applicant again asserts that Reiger does not teach or suggest anything that is bonded to anything else, for the reasons previously asserted above. Since the Examiner has failed to provide a reference that teaches or suggests a required limitation of Applicant's claims, *i.e.*, a porous fabric bonded to something else, the Examiner has failed to present a *prima facie* case for a 103(a) rejection. Reconsideration and withdrawal of the rejection is hereby requested.

Claims 47, 49 and 57 stand rejected under 35 U.S.C 102(a) as being unpatentable over Reiger (as above) in view of Flasch, Jr. (US 5,852,896). Each of these claims is an independent claim. Again, the Examiner asserts, incorrectly, that Reiger teaches or suggests that a material is bonded to a pot. Clearly, as previously discussed, Reiger does not teach or suggest that the material is bonded to anything. Since the Examiner has failed to provide a reference that teaches or suggests a required limitation of Applicant's claims, *i.e.*, outer material, root-tip-trapping material, or a surface bonded to something else, the Examiner has failed to present a *prima facie* case for a 103(a) rejection. Reconsideration and withdrawal of the rejection is hereby requested.

Claims 3,5-7,25,26,31,32,34,35,64,65 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above). Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Thomas (US 5,311,700). Claims 13-16,18-19,41,50-53,55 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Berlit et al. (GB 2,073,567 A). Claims 17,18,21,22,24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Van der Goorbergh (EP 300578 A3). Claims 20, 23,27,28,36-40, 56, 60-62 stand rejected under 35 U.S.C. 103(a) as

being unpatentable over Reiger (as above) in view of Flasch, Jr. (US 5,852,896). Claim 43 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Kalpin (US 3,094,810). Claim 45 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Billings (US 6,223,466 B1). Claim 54 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (as above) in view of Berlit et al. (as above) and Van der Goorbergh (as above). Claim 58 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Flasch as applied to claim 57 above, and further in view of Berlit et al. (as above) and Van der Goorbergh (as above). Claim 59 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Flasch as applied to claim 57 above, and further in view of Berlit et al. (as above).

Each of the above rejected claims is dependent from independent claims 1, 29, 46, 47, 48, 49, or 57, either directly or indirectly. For the reasons presented above, Applicant asserts that these independent claims are in condition for allowance. Therefore, the above rejected claims that depend from claims 1, 29, 46, 47, 48, 49, or 57 are now in condition for allowance. Reconsideration and withdrawal of the rejection is requested.

Having overcome each of the Examiner's rejections for the claims under examination, Applicant hereby requests that a Notice of Allowance be timely issued.

In the event there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/WHIT/0002 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,



Frank J. Campigotto
Attorney for Applicant
Registration No. 48,130
STREETS & STEELE
13831 Northwest Freeway, Suite 355
Houston, Texas 77040
(713) 939-9444



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MARKED UP VERSION OF CLAIMS

5. (Amended) The barrier of claim 4, wherein the porous fabric has a weight per square yard of between 2 and 10 ounces [per square yard].
6. (Amended) The barrier of claim 5, wherein the porous fabric has a weight per square yard of between 4 and 6 ounces [per square yard].
23. (Amended) The barrier of claim 1, wherein the root-impenetrable layer is impervious to UV radiation.
50. (Amended) The barrier of claim 49, wherein the porous fabric has a weight per square yard of between 4 and 6 ounces [per square yard].
55. (Amended) The barrier of claim 49, wherein the porous fabric is bonded onto [the] a polyethylene sheet by a method selected from gluing, laminating and combinations thereof.
56. (Amended) The barrier of claim 49, wherein [the] a polyethylene sheet has a thickness between 2 and 10 mils.
61. (Amended) The barrier of claim 57, wherein the porous fabric layer has a weight per square yard of between 2 and 10 ounces [per square yard].
62. (Amended) The barrier of claim 57, wherein the porous fabric layer has a weight per square yard of between 4 and 6 ounces [per square yard].